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4 UNITED STATES DISTRICT COURT  
5 DISTRICT OF NEVADA

6 \* \* \*

7 JOHN DAVID PAMPLIN,

8 Plaintiffs,

9 v.

10 WARDEN BAKER, *et al.*,

11 Defendants.

Case No. 3:16-cv-00745-MMD-CLB

ORDER

12  
13 **I. SUMMARY**

14 Plaintiff John David Pamplin, an incarcerated person in the custody of the Nevada  
15 Department of Corrections ("NDOC"), filed this action *pro se* under 42 U.S.C. § 1983.  
16 Before the Court is a Report and Recommendation of United States Magistrate Judge  
17 William G. Cobb ("R&R") (ECF No. 86) recommending that the Court grant in part and  
18 deny in part Defendants' motion for summary judgment (the "Motion") (ECF No. 69). The  
19 parties had until March 19, 2020 to file an objection. To date, no objection has been filed.  
20 For that reason, and because the Court agrees with Judge Cobb, the Court will adopt the  
21 R&R.

22 **II. BACKGROUND**

23 The Court adopts the facts in the R&R (ECF No. 86 at 1-3) and does not recite  
24 them here.

25 **III. LEGAL STANDARD**

26 **A. Review of the Magistrate Judge's Recommendations**

27 This Court "may accept, reject, or modify, in whole or in part, the findings or  
28 recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1). Where a party

1 fails to object, however, the court is not required to conduct “any review at all . . . of any  
2 issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985);  
3 *see also United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (“De novo review of  
4 the magistrate judges’ findings and recommendations is required if, but *only* if, one or both  
5 parties file objections to the findings and recommendations.”) (emphasis in original); Fed.  
6 R. Civ. P. 72, Advisory Committee Notes (1983) (providing that the court “need only satisfy  
7 itself that there is no clear error on the face of the record in order to accept the  
8 recommendation”).

### 9 **B. Summary Judgment Standard**

10 “The purpose of summary judgment is to avoid unnecessary trials when there is no  
11 dispute as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18  
12 F.3d 1468, 1471 (9th Cir. 1994). Summary judgment is appropriate when the pleadings,  
13 the discovery and disclosure materials on file, and any affidavits “show there is no genuine  
14 issue as to any material fact and that the movant is entitled to judgment as a matter of  
15 law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986). An issue is “genuine” if there is  
16 a sufficient evidentiary basis on which a reasonable fact-finder could find for the  
17 nonmoving party and a dispute is “material” if it could affect the outcome of the suit under  
18 the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248-49 (1986). Where  
19 reasonable minds could differ on the material facts at issue, however, summary judgment  
20 is not appropriate. *See id.* at 250-51. “The amount of evidence necessary to raise a  
21 genuine issue of material fact is enough ‘to require a jury or judge to resolve the parties’  
22 differing versions of the truth at trial.’” *Aydin Corp. v. Loral Corp.*, 718 F.2d 897, 902 (9th  
23 Cir. 1983) (*quoting First Nat’l Bank v. Cities Service Co.*, 391 U.S. 253, 288-89 (1968)). In  
24 evaluating a summary judgment motion, a court views all facts and draws all inferences in  
25 the light most favorable to the nonmoving party. *Kaiser Cement Corp. v. Fishbach &*  
26 *Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

27 The moving party bears the burden of showing that there are no genuine issues of  
28 material fact. *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982). Once the

1 moving party satisfies Rule 56's requirements, the burden shifts to the party resisting the  
2 motion to "set forth specific facts showing that there is a genuine issue for trial." *Anderson*,  
3 477 U.S. at 256. The nonmoving party "may not rely on denials in the pleadings but must  
4 produce specific evidence, through affidavits or admissible discovery material, to show  
5 that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991),  
6 and "must do more than simply show that there is some metaphysical doubt as to the  
7 material facts." *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th Cir. 2002) (quoting *Matsushita*  
8 *Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). "The mere existence of  
9 a scintilla of evidence in support of the plaintiff's position will be insufficient." *Anderson*,  
10 477 U.S. at 252.

#### 11 **IV. DISCUSSION**

12 While the parties have failed to timely object to the R&R, the Court has nevertheless  
13 conducted a *de novo* review to determine whether to adopt the R&R. Having reviewed the  
14 R&R (ECF No. 86) and the Motion (ECF No. 69), the Court agrees with Judge Cobb and  
15 adopts the R&R in full.

16 Judge Cobb recommended that the Court grant the Motion as to Plaintiff's  
17 Fourteenth Amendment due process claim for unlawful deprivation of his property  
18 because Plaintiff had a meaningful post-deprivation remedy in the grievance process (see  
19 *Greene v. Nev. Dept. Of Corrections*, 2015 WL 1034276, \* 5 (D. Nev. Mar. 10, 2015)) and  
20 Plaintiff had recourse to small claims court (see NRS §§ 41.0322, 73.010, and 41.031).  
21 (ECF No. 86 at 6-7.) See *Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (holding that an  
22 unauthorized intentional deprivation of property by a state employee does not constitute a  
23 due process violation if a meaningful post-deprivation remedy for the loss is available).

24 In contrast, Judge Cobb recommended that the Court deny the Motion on Plaintiff's  
25 Eighth Amendment claim for deliberate indifference to Plaintiff's serious medical needs.  
26 (ECF No. 86 at 14.) Although Defendants contend that they did not act with deliberate  
27 indifference because they provided Plaintiff with medical appointments, medication and  
28 an ankle brace (ECF No. 86 at 10), the Court agrees with Judge Cobb that Defendants

1 rely on medical records (ECF Nos. 71-3, 71-4) that are somewhat illegible and appear to  
2 be incomplete. (ECF No. 86 at 11.) Without further evidence, it is unclear to the Court that  
3 Defendants adequately addressed Plaintiff's medical needs. (*Id.*)

4 Finally, Judge Cobb recommended that the Court deny the Motion on the issue of  
5 qualified immunity. (ECF No. 86 at 12-14.) Defendants contend they are entitled to  
6 qualified immunity because they did not violate a clearly established right when they  
7 confiscated Plaintiff's brace. (See ECF No. 86 at 13.) But Defendants state the issue too  
8 narrowly. See *Deorle v. Rutherford*, 272 F.3d 1272, 1285-86 (9th Cir. 2001) (clarifying that  
9 qualified immunity does not require that a prior case prohibit the exact misconduct at issue  
10 in the case); *Hope v. Pelzer*, 536 U.S. 730, 741 (2002) ("[O]fficials can be on notice that  
11 their conduct violates established law even in novel factual circumstances."). Here,  
12 Plaintiff alleged that Defendants violated Plaintiff's Eighth Amendment right when  
13 Defendants consciously disregarded an excessive risk to Plaintiff's health and chose a  
14 course of treatment that was medically unacceptable under the circumstances. (ECF No.  
15 86 at 13). As Judge Cobb pointed out, this constitutes a violation of clearly established  
16 law. (*Id.* at 13-14.) See *Jackson v. McIntosh*, 90 F.3d 330, 332 (9th Cir. 1996).

## 17 **V. CONCLUSION**

18 The Court notes that the parties made several arguments and cited to several cases  
19 not discussed above. The Court has reviewed these arguments and cases and determines  
20 that they do not warrant discussion as they do not affect the outcome of the motions before  
21 the Court.

22 It is therefore ordered, adjudged, and decreed that the Report and  
23 Recommendation of Magistrate Judge William G. Cobb (ECF No. 86) is accepted and  
24 adopted in full.

25 It is further ordered that Defendant's motion for summary judgment (ECF No. 69)

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1 is denied, except as to Plaintiff's Fourteenth Amendment due process deprivation of  
2 property claim.

3 DATED THIS 25<sup>th</sup> day of March 2020.

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6 MIRANDA M. DU  
7 CHIEF UNITED STATES DISTRICT JUDGE  
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